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THE JOURNAL OF POLITICAL ECONOMY

VOLUME 27

July 1919

NUMBER 7

THE WEBB LAW, ITS SCOPE AND OPERATION

In connection with the lively interest displayed by American business men in the new situations which have developed in international trade as a result of the world-war, the so-called Webb law is receiving a noticeable share of attention.

Excluding all merely temporary, war-time legislation, it is the most important piece of legislation enacted by Congress during the war for the promotion of American export trade. Together with the Federal Reserve Act, and the act authorizing the War Finance Corporation to furnish credits to finance foreign trade, the Webb law represents a noteworthy forward step in the consummation of an American foreign-trade policy. Already a literature of considerable volume has grown up on the Webb Act, and one of our large law schools has included a study of this law in one of the courses of its curriculum.

Moreover, interest in the Webb law is not confined exclusively to this country. The provisions of the Act and its operation have been the subject of numerous articles in foreign publications. With one or two exceptions, which will be noted further on, the comments on the law which have appeared in the foreign press have not voiced any unfavorable criticism. On the contrary, the Act has been pointed to as a model statute.

Attention has been called particularly to the fact that the Webb Act represents the first effort involving compulsory registration of trade combinations and a certain degree of control of the activities of such combinations by a government agency under a special law. A similar plan for government control of cartels and syndicates was advocated at different times in Germany and also in Austria, in connection with official cartel *enquêtes* in the years 1902 to 1908. In Great Britain this method has apparently strong support in the British Board of Trade. The Committee on Commercial and Industrial Policy After the War, in its final report¹ recommended that

it should be a legislative requirement that all international combinations or agreements to which British companies or firms are parties, made for the regulation of the prices of goods or services, or for the delimitation of markets, should be registered at the Board of Trade by the British persons, firms or companies concerned, with a statement of the names of all the parties thereto, and of the general nature and object of the combination or agreement; and that all modifications of such agreements and all adhesions and withdrawals should also be notified.

As to combinations or agreements between British firms, the Committee recommended that it should be optional for the parties to register at the Board of Trade, but that any price or other marketing arrangements or agreements registered should be enforceable at law as between the parties thereto. Lastly, the Committee recommended that the Board of Trade should have power to call upon individual consolidations or combines to furnish such information as it may require.²

The newly created Canadian Trade Commission apparently favors new legislation along similar lines regarding the future treatment of combines in Canada, "which shall proceed upon the broad principle that there is an aspect of such movements which requires encouragement, while other aspects require repressive measures."

Both in this country and abroad the Webb law has attracted attention by reason of still another fact. The laws of a number of

¹ London, 1918, pp. 62 and 63.

² See also "Report of Committee on Trusts," Ministry of Reconstruction, London, 1919.

countries, including Great Britain, Canada, France, Austria, Australia, and others approach the problem of trade combinations with the evident purpose of repressing the excrescences of syndication. They plainly indicate a tendency to restrict the free formation as well as the free operation of syndicates or combines. The Webb law represents a departure from this policy. It is looked upon by many, and this was brought out clearly in the debates and hearings on the Webb bill in Congress, as an indication of a change in our traditional policy concerning trade combinations and their economic utility. A similar shifting in governmental attitude toward combinations took place several years ago in connection with the German potash law, followed somewhat later by similar laws elsewhere. The whole movement has received a strong impetus during the war, particularly in the countries economically most highly developed.

NUMBER AND KIND OF ASSOCIATIONS FORMED UNDER THE WEBB LAW

Most of the discussions of the Webb law at meetings of trade associations, and of various commercial organizations, as well as in the press, confined themselves either to certain legal problems or to the numerous advantages expected to result from use of the powers provided by that Act. It is now over a year since the Webb Act was placed on the statute books of the United States, having been approved April 10, 1918. This is, of course, too short a time to permit of any final conclusions as to its operation. Nevertheless, a survey of the general working of the Act during the past fifteen months, from a legal as well as an economic point of view, may show in how far the expectations of those who advocated the enactment of this law have been realized up to the present time. In addition to this, certain trends of development can be readily observed which open up a number of interesting new phases in the history of trade combinations, and in a wider sense of international trade. Then, too, an analysis of the form of organization, and of the agreements of export associations purporting to operate under the Webb Act, will prove of interest in several ways.

Under Section 5 of the Webb Act every association which at the time when the law was enacted was engaged solely in export trade,

as well as every association formed after the passage of the Act, shall, under penalty of fine for failure to do so within a prescribed time, file certain statements with the Federal Trade Commission. These verified written statements shall set forth the places of business, officers, stockholders, or members, and shall include in the case of a corporation a copy of its articles of incorporation and by-laws, and if the association is unincorporated, a copy of its contract of association. Special forms for making this first report are provided by the Federal Trade Commission.

Up to the present time 91 concerns, with 807 stockholders or members, have filed statements with the Federal Trade Commission. It appears,¹ however, that among these associations there are a number whose articles of association contemplate the transaction of business other than that of solely exporting to foreign nations, whereas Section 2 of the Act exempts from the Sherman Law such associations only which are entered into for the sole purpose of engaging in export trade.

Twenty-five of the associations which purport to be engaged solely in export trade under the Webb law comprise 320 stockholders or members. Among the latter, however, are several trade associations, each with a large membership of its own, so that the actual underlying number of individual concerns which appear to be entitled to the benefits of the Act easily aggregates a thousand. The plants operated by the member concerns of these twenty-five associations number 318, and are distributed over 39 states of the Union.

The diversity of industries in which these export associations have been formed is illustrated by the following list of products which the associations purpose to export to foreign nations: bunker coal, canned fruit, carbonate of magnesia, chemicals, clothespins, condensed milk, copper, doors, elastic and non-elastic webbing, fertilizers, flax, hardware, hides, iron and steel products, laths, locomotives and spare parts thereof, lumber, meats, metal accessories, moldings, office equipment, pharmaceutical blocks of carbonate of magnesia, phosphate rock, pickets, plaster, shingles, skins, silk, soap, staves, tallow, vegetable oils, wool.

¹ Federal Trade Commission, Foreign Trade Series No. 1 (1919), p. 6.

AMERICAN COMBINATIONS VERSUS FOREIGN COMBINATIONS

In how far have developments subsequent to the passage of the Webb law justified the argument that co-operative selling agencies or associations among American exporters are needed in order that the latter may meet foreign rivals on foreign soil on equal terms? The Federal Trade Commission called attention to foreign combinations competing with American exporters in a special report.¹ Therein it recommended properly safeguarded declaratory legislation, permitting concerted action by American business men in export trade. President Wilson on several occasions emphasized the need of making it possible and legal for our exporters to combine, allowing them "to manage their export business at an advantage instead of a disadvantage as compared with foreign rivals." Likewise, the Committee on Interstate Commerce of the U.S. Senate (64th Congress, 2d Session, February 14, 1917) in its report recommending an amended form of the Webb law for passage stated as its belief that "it is necessary to permit our business men to form organizations or associations so as to enable them to meet foreign competitors on a more equal footing."

While it is a well-known fact that export combinations existed to a limited extent prior to the war in various foreign countries, nevertheless it must be said that their number and strength has been frequently exaggerated by over-enthusiastic writers and speakers. As a result of this the importance of foreign-export cartels and combinations as competitive factors in international trade before the war came to be somewhat over-estimated in the minds of many, both here and abroad. However, in the world-wide drive for export markets which set in during the war, co-operation in export trade has been advocated and put into actual operation with an ardor and on a scale which easily outdistanced all previous efforts of this kind.² The universal tendency toward consolidation, so characteristic of commerce and industry during the war, crystallized itself to a marked extent in the form of combinations for the control of prices and production in the domestic market and

¹ Report on Co-operation in American Export Trade, Washington, 1916.

² See "Cartels during the War," *Journal of Political Economy*, January, 1919, pp. 1 f.

also in export trade. Where before the war there was a limited number of export combinations, chiefly in Germany, we now find them in large numbers in all the leading countries of the world. In Great Britain their formation is being actively encouraged by the British Board of Trade. The Canadian Trade Commission has strongly recommended co-operation among Canadian manufacturers for export trade. The Japanese government is fostering the exports of that country by aiding export combinations through subsidies and in other ways. Looking at competitive conditions, then, as they exist in international trade today, the fact cannot be disregarded that organized groups have replaced very largely the individual enterpriser, and that future development seems to tend in the same direction. There is this marked difference, however, that whereas, in the absence of any government control, more or less secrecy enclouds the organization and operation of foreign export combines, American export associations operating under the Webb Act must comply with specific legal regulations and are subject to a certain supervision by the government so as to safeguard fair competition and high business standards.

JOINT SELLING AS APPLIED TO TRADE-MARK GOODS AND SPECIALTIES

It has been stated that export associations under the Webb Act would not be workable in connection with industries covering specialties, and that where trade-mark goods are involved joint selling agencies would not operate successfully. Experience thus far has disproved this theory. One of the most successful export associations now in operation, being at the same time one of the first associations to be formed under the Webb Act, handles specialties. It is true that a considerable number of the associations formed up to the present time market staple products, like lumber, coal, steel, etc., where there are only a few grades and where no particular trade-mark or individual identity of manufacturing source have to be taken into consideration. But, there are also others where a large number of different kinds of articles are covered by a joint selling agreement. Similarly, the question of trade-marked goods has been solved successfully by a number of associations. One way in which it has been worked out is by the use of

a dominating or export trade-mark to represent the export association and indicate the general line of business. In addition to this there is used a subsidiary trade-mark which goes under the dominating trade-mark, as indicating the particular plant from which the product came. The foreign buyer thus has an opportunity to select and purchase the particular product to which he has been accustomed. Several associations have provided for the future use of a special export trade-mark, and are planning to educate their members gradually to give up their individual marks or brands. In line with this are efforts made by certain associations to standardize their products and to eliminate unnecessary styles, grades, brands, etc.

Practical experience has shown that success in reaching a basis of mutual co-operation in these matters depends very largely upon the experience, tact, and enthusiasm of the manager of the association and his ability to overcome petty jealousies and rivalries, as well as disinclination on the part of individual members to give up long-established policies. Certain sacrifices must be made frequently by large as well as small members for the common good.

SMALL MANUFACTURERS AVAIL THEMSELVES OF THE WEBB LAW

The argument was frequently made in favor of the Webb bill that it would give the small American manufacturer, who alone cannot afford to build up an export organization, an equal chance with large manufacturers to enter foreign markets. Small manufacturers, it was contended, might co-operate among themselves or jointly with large manufacturers in developing an export trade for their products. The benefits which would accrue to the small manufacturer by combining for export trade were held out by many as a particularly strong point justifying the enactment of a law which would allow such combinations. What has been the result thus far in this respect? While a considerable number of the associations formed up to the present time comprise large concerns, several of them consisting wholly of large and financially powerful concerns, the prevailing tendency seems to be to admit all competitors in an industry who are willing to co-operate and agree to

work along with the rest under definite understandings and arrangements. Evidence of this may be seen in the fact that export associations grow in many cases out of trade associations which have existed for many years. Several export associations have provisions in their charters which make admission to membership dependent upon membership in the respective trade associations. One large western lumber export association accepts as members only bona fide lumber manufacturers of the Pacific coast. As a matter of fact, large manufacturers have in several instances refused to join in the formation of an export association on the plea that they had already built up an export organization of their own and failed to see any advantage to themselves in giving up their well-established individual organization and joining with business rivals "who never have done any foreign trade." On the other hand, cases are known where some of the largest manufacturers in certain industries were the strongest advocates for joint exporting by all manufacturers, small as well as large, in that industry. At a recent meeting held for the purpose of forming a lumber export association, a lumber manufacturer arose and said: "I believe the capacity of my mills is the second largest in the United States, but, gentlemen, I don't care if you don't sell one single log of my particular mill, so long as you get rid of the surplus on the domestic market."

Furthermore, an examination of the individual member concerns of the different export associations shows that there are many concerns representing a capital as small as \$5,000 or \$10,000 each. So that, generally speaking, it can be said that the advantages of the Webb law are being recognized and utilized by an increasing number of small manufacturers throughout the country and that evidences of a spirit of mutual fairness and co-operation among large as well as small concerns are plentiful.

HOW ASSOCIATIONS BENEFIT UNDER THE LAW

A great number of advantages have been held out by speakers and writers as likely to accrue to American business men through co-operation in export trade. In the course of time, as the associations which operate under the Webb law continue to expand their activities, the practical advantages and disadvantages of combining

will become better known. Moreover, a wider field for observation and a greater diversity of material will become available, as the number of different industries grows in which export associations are formed. However, even now specific instances can be mentioned in which certain benefits of concerted action under the Webb law have been actually experienced, and in which that Act makes it possible for American manufacturers to promote their export business. That applies, for instance, to a certain lumber export association. In view of the fact that the small sailing vessel has been largely superseded by ocean-going steamers, no one mill belonging to that association was in a position to take care of an entire cargo with facility. The fact that these tramp steamers require prompt dispatch, which was not so important in the case of the old sailing vessel, places small mills with limited facilities at a disadvantage. Certain mills on account of their location could undertake deliveries during the summer season only, and were placed at a disadvantage in engaging in all-the-year-round export business. Furthermore, certain of the most important export products require for their particular production a kind of lumber which under normal sawing conditions is not produced in sufficient quantities at any one mill to make up a cargo; hence the product of several mills must be assembled to furnish the requisite quantity. For these and other reasons it appears that if any substantial export business was to be done by this particular industry, co-operation was necessary.

Accurate data on the cost of doing foreign business, including current information on consular fees, stamp duties, credit information service, collection charges, and numerous extra charges, are now being compiled by several export associations for the benefit of their members. Other associations have sent special commissions abroad to make a survey of foreign markets. In a recent number of the *London Times*, attention is called to "an interesting situation which heralds a reversal of policy" on the part of certain American manufacturers who have organized an export association. The correspondent goes on to say that although the United States sold a considerable quantity of the respective goods in the United Kingdom before the war, most of the sales were

made practically without solicitation to British business men who visited the United States and noted with favor the equipment and appliances in use. The plan of the new export association now calls for special representatives to develop trade in Great Britain, France, and Italy.

Still another feature of certain export associations consists in the fact that instead of the individual members dealing through export commission houses or importing houses located in foreign countries, the joint export business of the members is now being done direct with customers in the various countries. The policy adopted by some association of having all shipments inspected as to quality, etc., so as to make them conform to the specifications called for in the contract, promises to become an important factor in establishing a reputation of good service and quality for American-made goods in foreign countries.

LEGAL FORM OF EXPORT ASSOCIATIONS

In forming an export association, legal as well as economic problems must be solved. In the following attempt to give a brief comparative analysis of the structure of the various associations purporting to qualify under the Webb Act, we shall consider them, therefore, from a legal and an economic point of view.

Section 1 of the Act defines the word "association" wherever used in that Act, as meaning "any corporation or combination, by contract or otherwise, of two or more persons, partnerships, or corporations." If on the basis of the foregoing we now examine the legal form in which the associations, organized thus far, have been clothed, we will find that they group themselves readily into two distinct classes, viz., incorporated and unincorporated associations. The greater number operate under the corporate form of organization. This class includes most of the larger associations, if we take into consideration not so much the number of members as the amount of working capital and the volume of export business handled through the central export sales agency. In this class we find also the highest type of export association, that is, where all export business is transacted exclusively by the association.

Nearly all the large associations are Delaware corporations. The liberal provisions of the corporation law of Delaware apparently

prompt lawyers to choose that state in preference to others for the purpose of incorporating export associations. The latitude as to resident agents, the location of a corporation's main office, its books and records, etc., which the Delaware corporation law allows, reflects itself plainly in the charters of the respective associations.

A comparison of the articles of incorporation and by-laws of the various associations indicates a considerable degree of uniformity in substance as well as in form and phraseology. Two or three standard types can be distinguished, which apparently served as models for others. The wide publicity given to the charter and by-laws of the Consolidated Steel Corporation may explain why the wording of certain provisions contained in the charter of that association has been adhered to so closely by others.

As an illustration, large parts of the following definition of the charter powers of the Consolidated Steel Corporation have been adopted by other associations:

To engage solely in export trade as the term export trade is defined in the Act of Congress approved April 10, 1918, entitled, "An Act to Promote Export Trade and for Other Purposes," commonly known as the "Webb Act," namely, "trade or commerce in goods, wares, or merchandise exported or in the course of being exported from the United States or any Territories thereof to any foreign nation," and as defined in any and all Acts of Congress amendatory of or supplementary to said Webb Act, and, in connection with such trade, to do any and all things necessary and incidental thereto, including the following, provided that this corporation shall not have power to do any act or thing because of the doing of which it would be deemed to be engaging in business other than export trade as defined by the said Webb Act and any and all acts amendatory thereof or supplementary thereto:

To buy and sell for its own account merchandise of every kind and nature, for exportation, and to export the same, from the United States to all foreign countries.

To buy and sell merchandise of every kind and nature for exportation, and to export the same, from the United States to all foreign countries, for the account of others, and incidental thereto to make advances on consignments of such merchandise, or to hypothecate the same.

To act commercially and generally as agent for other corporations, partnerships, associations and individuals, to the extent permitted by the corporation laws of Delaware hereinafter referred to.

To charter, purchase or otherwise acquire any interests in vessels, both for the account of itself, and for the account of others, for the carrying of freight

or passengers between the United States and any foreign country and between any foreign countries; and to operate such vessels.

To contract for and engage in the construction in any foreign country of any structure or article made entirely or partly of any article exported by this corporation.

To appoint agents and representatives in all parts of the world for the purpose of carrying on any and all of the objects of this corporation.

To acquire by purchase, subscription or otherwise, to invest in, hold for investment . . . or otherwise dispose of, either the whole or any part of the shares of stock, bonds and other evidences of indebtedness, obligations and contracts of any corporation, public, quasi public or private, domestic or foreign, and all trust or other certificates of, or receipts evidencing, interest in any such securities; to issue in exchange therefor its own stock, bonds and other obligations, and while owner of any such stocks, bonds and other evidences of indebtedness or interest therein, to exercise all the rights, powers and privileges of ownership, including the right to vote thereon for any and all purposes.

To aid, by loan, subsidy, guaranty, or in any other manner whatsoever, any corporation whose stocks, bonds, securities, or other obligations are in any manner held or guaranteed, and to do any and all other acts or things toward the preservation, protection, improvement or enhancement in value, of any such stocks, bonds, securities, or other obligations, and to do all and any such acts or things designed to accomplish any such purpose.

To acquire the good-will, rights, property and franchises of any person, firm, association or corporation, and to pay for the same in cash or bonds of this corporation, or otherwise, and to hold or in any manner dispose of the whole or any part of the property so acquired.

To borrow money and issue bonds, debentures or obligations of this corporation from time to time for any of the objects or purposes of the corporation, and to secure the same by mortgage, pledge, deed of trust, or otherwise.

To have one or more offices, to carry on any or all of its operations and business, and without restriction or limit as to amount to purchase or otherwise to acquire, hold, own, mortgage, sell, convey or otherwise dispose of, real and personal property of every class and description in any of the states, districts, territories or colonies of the United States and in any and all foreign countries, subject to the laws of such state, territory, colony or country.

To do any and all things necessary in order to realize the purposes herein set forth, and, in general, to carry on any other business in connection with the foregoing and to have and to exercise all the powers conferred by the corporation laws of Delaware hereinafter referred to.

The foregoing clauses shall be construed both as objects and powers; and it is hereby expressly provided that the foregoing enumeration of specific powers shall not be held to limit or restrict in any manner the powers of this corporation.

The provisions relating to stock distribution and control as well as voting power constitute one of the most important elements incorporated in the usual corporation charter of these associations. In only a few associations do we find each stockholder entitled to one vote for each share of stock held. In most cases each member has only one vote, irrespective of the amount of capital stock held by such member. Various devices are used to prevent a majority of the stock or control of the associations from falling into the hands of a ring. Quite frequently the voting power and the control of the corporation is vested in a limited number of shares of stock without par value. In the case of the Textile Alliance Export Association the control of the Association is held by four trade associations, the American Association of Woolen and Worsted Manufacturers, the National Association of Woolen Manufacturers, the National Council of American Cotton Manufacturers, and the Association of Cotton Textile Manufacturers. Each of these member associations holds twenty-five shares of common stock without par value. This stock has voting power, but is not entitled to dividends. The charter of a large lumber export association provides that no manufacturer, individually or through affiliated interests, shall ever become a majority owner or holder or be able to exercise a dominating control of the capital stock of the association.

Another large association has a provision according to which ownership of stock by members must be in the same ratio to the total stock as the business contributed by the member bears to the total business of the export company. All stock of this association is held by trustees under a trust agreement.

The amount of authorized and paid-in capital stock varies greatly. One large association has an authorized common stock of \$10,000,000 with \$1,235,000 paid in. Another association has 100 shares of common stock without any par value, but with voting power, and \$100,000 preferred cumulative stock entitled to 7 per cent dividends but with no voting power. A third association has an authorized common stock of \$250,000 par value, but its paid-in stock amounts to only \$11,000. Still another association, the agreement of which runs for five years, has a capital stock

of \$100,000 and began its business with \$25,000. Under a provision of this association each member is to hold not more than 20 per cent of the issued capital stock, except when otherwise permitted by holders of 75 per cent of the capital stock.

ECONOMIC PHASES OF EXPORT ASSOCIATIONS

The economic and commercial working plan according to which the whole machinery of the export association is to function is generally fixed in the form of a separate agreement between the individual members and the association. This practice has been followed by most incorporated associations. In the case of unincorporated associations a scheme covering the plan of operation is generally embodied in the articles of association. From the viewpoint of the economist these agreements constitute the most fruitful source material for a study of the organization and actual operation of export associations.

These agreements indicate the policy to which the association is committed as regards uniform prices, terms of sale, allotment of production and of orders, division of profits, delimitation of markets, etc. They also establish the degree of independence of the individual members, as well as the co-ordination and solidarity vested in the association.

From the point of view of solidarity two types of associations can be distinguished. The first type of association represents a complete merger of the export business of the members. An example of this class is the Consolidated Steel Corporation which represents a high intensive organization of the export business of ten important steel concerns. All export business of the members is done through the association, which establishes base prices at which members must furnish their allotted quota.

The second class comprises associations of a less concentrated form of organization, where members retain a certain degree of independence. For example every producer member agrees to market his full export through the Association, but he may maintain his own foreign agencies and sell direct to foreign customers subject to the association agreement in respect of apportioning orders and averaging prices. The Copper Export Association,

Inc., is an example of this kind. The Textile Alliance Export Association also belongs to this class. It is formed to act as broker for selling houses or merchants with whom it may enter into contractual relations on the condition that such selling house or merchant purchase a certain amount of preferred capital stock of the Association. A special contract between individual members and the Association provides for a certain brokerage to be paid to the Association, fixes sales terms and specifies as regards the handling and display of samples.

The question of allotment of orders, or of what share of business each member is to contribute to the total business of the export association, is of vital importance. This has proved the rock upon which most cartels or combines have foundered in the past, as the history of cartels shows the world over. A very large part of the litigation recorded in the cartel judicature of Germany, Austria, Belgium, France, etc., grew out of disagreements, breach of contract, etc., in connection with apportionment or allotment agreements. In the formation of new associations the working out of a satisfactory plan for the allocation of business between members frequently proves an obstacle difficult to overcome.

In the case of the Consolidated Steel Corporation, the member companies and the Directors of the Corporation agree upon a quota of "promised products" of steel and iron about September 30 of every year. This quota is generally 10 per cent of the total output of all finished products of a member company and fully representative of the range of each member's production. This tonnage is expected to be available in approximately equal monthly instalments. But the Directors may decide that certain deliveries are not required, and in that case or of any instalment not taken it automatically ceases to be the obligation of the member company to deliver. When the Corporation's foreign sale demands tonnage beyond the "promised products" it will call for them pro rata, but the members are not required to deliver.

The American Export Lumber Corporation, an association of wholesale lumber dealers, has a unique method of distributing orders.

Each member has the opportunity to bid on all or any part of foreign orders. Every member whose bid to the association is equal to or lower than the price, after the deduction of its commission and expenses, at which the association

secures the business, is entitled to share in the order as determined by the executive committee after due consideration of his facilities, location and ability to guarantee service on the order. This gives to the association all the advantages of strong competitive bidding between its members, thus securing a possible wide price-range on which to negotiate business, and yet prevents the creation of ill-will between its members, which might naturally follow, by giving to each member bidding at or below the final price a share in the business. The low bidder for the contract which was secured at a high price thus secures a large profit margin, the other competitors share in margins satisfactory to them, and the corporation secures its fixed commission.

The manner of dividing or distributing profits is another important element in the operation of an export association. Certain associations which are not conducted for profit serve primarily as distributing agencies for their members on a nominal commission basis. The individual members realize profits on their shipments just as if they were selling through an export commission house. Other associations have provisions for stock dividends and for a distribution of surplus profits in the form of rebates or according to some scheme of apportionment.

HOW THE WEBB LAW AFFECTS FOREIGN PURCHASERS

Shortly after the Webb law was passed by Congress, criticisms appeared in *La Epoca* of Buenos Aires. In an article which appeared in August 25, 1918, under the heading: "North American Commercial Expansion—Legislation favoring it—the Webb law," the following statement was made:

The Webb law seems to have the foreign markets in a situation where they must defend themselves as best they can against proceedings which tend to impede and dominate free competition, which proceedings are condemned within the territory of the United States as being abusive and disloyal, and we seldom tolerate in one's own house what is rejected by one's neighbor as harmful.

Efforts were made at once by representative American manufacturers to set at rest any misapprehensions which might have arisen in Argentina, and apparently no further unfavorable comments on the Webb law have appeared in the press of that country. As stated above, the foreign press and leading spokesmen of foreign governments have on several occasions given evidence of a very

favorable attitude toward the Webb law. However, in view of the above-mentioned criticism it may not be amiss to point out certain provisions of the Webb law, as well as other considerations which have a bearing on the subject.

In the first place it is to be noted that Section 4 of the Webb Act makes the prohibition against unfair methods of competition and the remedies provided for enforcing that prohibition contained in Section 5 of the Federal Trade Commission Act of September 26, 1914, applicable to unfair methods of competition used in export trade against competitors engaged in export trade. Furthermore, Section 4 of the Webb Law expressly gives extra-territorial jurisdiction to the above-mentioned provision of the Federal Trade Commission Act against unfair methods of competition. The law supplementary to the Federal Trade Commission Act, generally known as the "Clayton Law," specifies certain "unfair practices," including certain forms of price discrimination and so-called "tying contracts."

The fact should not be lost sight of that export trade combinations have been formed in all important commercial countries of the world, but that the laws of the United States alone require American associations to register with a government agency which has wide-reaching powers under the Webb Act to check unfair practices of competition. If certain practices on the part of export combinations should grow up which would prove objectionable and would be detrimental to "fair play" in international trade, it would become a matter for international action.¹

Looking at the Webb law from the foreign purchaser's point of view, a number of benefits accruing to him as a result of the operation of that law merit attention. The greater diversity of goods, as well as the increased volume of American manufactures which are likely to flow to oversea markets in consequence of more American manufacturers participating in export business would seem to involve considerable benefit to customers in foreign lands. Associations engaged solely in export trade are in a position to

¹ See article by W. B. Colver on "Recent Phases of Competition in International Trade," in the *Annals of the American Academy of Political and Social Science*, May, 1919, pp. 233 ff.

pay much better attention to the needs of a foreign market than the average individual exporter, jobber, etc. The saving in overhead expenses, etc., under a joint selling arrangement makes possible a reduction in price. And finally, to mention but one more advantage of the Webb law to foreign customers, the facilities for merchandising of well-organized and financially sound export associations will stimulate competition in foreign markets.

Recently the Federal Trade Commission issued its first formal complaint under the unfair-competition provision of the Export Trade Act. The complaint which has been issued against Nestle's Food Company, Inc., alleges that the company, with the effect of acquiring for its product any undue preference which might be given by the purchasing public in Mexico to condensed milk manufactured in Europe, has during the past year adopted and used on its cans labels which mislead Mexican purchasers into believing that the milk is manufactured in Europe and which wholly conceal the fact that the milk is manufactured in and shipped from the United States.

ADMINISTRATION OF THE WEBB ACT

The Federal Trade Commission is charged with the administration of the Webb Act. In addition to requiring every association engaged solely in export trade to file the verified written statement mentioned above, Section 5 of the Act provides that on January 1 of each year each association

shall make a like statement of the location of its offices or places of business, and the names and addresses of all its officers and of all its stockholders or members and of all amendments to and changes in its articles or certificate of incorporation, or in its articles or contract of association.

In the same section of the Act wide powers of investigation are given to the Federal Trade Commission in the provision that each association "shall also furnish to the Commission such information as the Commission may require as to its organization, business, conduct, practices, management, and relation to other associations, corporations, partnerships, and individuals." Failure on the part of an association to comply with this provision subjects such association to a penalty and forfeiture of the benefits of the Act.

The numerous detailed matters of administration which arise in connection with the administration of the Act are handled by a special Division of the Federal Trade Commission, known as the Export Trade Division. All records required to be filed with the Commission are received, examined, and filed by economic and legal experts connected with this Division. Current developments relating to prices, market conditions, etc., in this country and abroad are closely followed in so far as they may have a bearing on the operation of the Webb law.

Under Section 6(*h*) of the Federal Trade Commission Act the Commission has been given specific powers to investigate trade conditions in and with foreign countries where associations, combinations, or practices of manufacturers, merchants or traders may affect the foreign trade of the United States.

As mentioned in another part of this article, administrative organizations for the control of export combines similar to the machinery created under the Webb law are being planned in other countries.

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